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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-623

KENTUCKY CARBON CORPORATION and BITUMINOUS COAL OPERATORS' ASSOCIATION - - - - - - - - Petitioners

versus

INTERIOR BOARD OF MINE OPERATIONS APPEALS and FRANKLIN PHILLIPS - - - - - Respondents

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Petition For a Writ of Certiorari to the United States Court of Appeals For the District of Columbia Circuit

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BRIEF IN OPPOSITION

JOSEPH W. JUSTICE
317 Second Street
Box 50
Pikeville, Kentucky 41501

FRANCIS D. BURKE
317 Second Street
Box 50
Pikeville, Kentucky 41501

Attorneys for Respondent, Franklin Phillips

WESTERFIELD-BONTE CO., INC., 619 W. KENTUCKY, LOUISVILLE, KY.

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KENTUCKY CARBON CORPORATION and BITUMINOUS COAL OPERATORS' ASSOCIATION - - - - - - *Petitioners*

v.

INTERIOR BOARD OF MINE OPERATIONS APPEALS and FRANKLIN PHILLIPS - - - - - *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION

The Respondent, Franklin Phillips, respectfully states that this brief is in response to Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia, respectfully states that said Petition should be overruled.

COUNTERSTATEMENT OF THE CASE

The Respondent, Franklin Phillips, as his counterstatement of the case would like to adopt the concise and lucid statement of the majority opinion of the Court of Appeals for the District of Columbia Circuit. The writer of this brief does not feel that he can improve upon the statement recited therein.

The Respondent would, thereof, like to point out several inadequacies in the statement by the Petitioners. First, the contract between the Union and Company, in existence at the time Respondent was fired, was entered into in 1968, one year prior to the 1969 Coal Mine Health and Safety Act. Obviously, there was nothing in that contract directed at any procedure to effectuate the rights and obligations contained in the 1969 Act. The Union and Company in their November, 1971 contract formalized the procedure by which the members of the Union were to handle safety complaints. As pointed out by the majority opinion of the Court of Appeals, neither the Umpire nor the Regional Director of the NLRB reached the issue of the Respondent's rights under the 1969 Coal Mine Health and Safety Act. The Umpire stated that he had no authority to interpret or enforce the requirements of the Federal Health and Safety Act and declined to rule on Respondent's asserted rights under the Act. The Regional Director, in his refusal to issue a complaint, did not seem to touch high nor low, the issue presented by the Respondent in his complaint to the NLRB. On the refusal of the Regional Director to issue a complaint, and because the Respondent was

without funds to pursue a two-pronged approach to secure his rights under both the NLRB and the Coal Mine Health and Safety Act, upon advice of Counsel that his rights were adequately protected by the Coal Mine Health and Safety Act, a decision was made not to appeal the Regional Director's decision.

REASON WHY THE WRIT SHOULD NOT BE GRANTED

The Court of Appeals was clearly correct in holding that a miner was protected by initiating a complaint of safety violations under the established and conceded practice at this mine by both the union and employer of handling safety violations.

To give Section 10(b)(1) [30 U.S.C. 820(b)(1)] of the Act such narrow construction as urged by the Petitioners would emasculate the clear intent of Congress in protecting the right of miners in making complaints of mine safety violations. In view of the remedial purposes of the Act, these sections must be given a broader and more liberal interpretation than that urged by the Petitioners. The intent of Congress is shown by the Legislative History of the Act, which in part reads as follows:

> Subsection (b) [of the Act] prohibits discrimination against miners for having exercised their rights under this Act *or for having participated, in any way, in the enforcement of the Act.* The subsection provides procedures for obtaining reinstatement and back pay for miners discharged by operators and other remedies for miners discriminated against. (Emphasis added.)

(Legislative History, Federal Coal Mine Health and Safety Act, Committee on Education and Labor, House of Representatives, March 1970, p. 1122.)

The broader and logical intent of the Act is shown in the regulations adopted under Section 110 of the Act. 30 CFR 4.560(b) reads as follows:

> An application for review of an alleged discharge or act of discrimination may be initiated by a miner who believes that he has been discharged or otherwise discriminated against by reason of *invoking his rights*, testifying or awaiting to testify under the Act, or by a representative of miners who believes that he has been discharged or otherwise discriminated against by reason of *invoking his rights* or the rights of the miners he is authorized to represent, testifying or awaiting to testify under the Act. (Emphasis added.)

This matter cannot be characterized as a simple labor dispute as urged by the Petitioners. It is true that the November 1971 contract formalized the procedure for dealing with safety complaints under the 1969 Act. This contract, as in the informal procedure being followed at the mine at the time that the Respondent was fired, recognizes the impracticality of the employee making complaints directly to the Secretary. This contract formalized the procedure in effect at the Ken-Car mine of first processing safety complaints at the mine before "the secretary or his representative" was brought into the picture.

In the instant case, the umpire recognized the Act to give the miner a separate means of relief for such acts of discrimination and he did not attempt to ad-

judicate the Respondent's rights under the Coal Mine Health and Safety Act, nor the scope and application of the Act's protection against discrimination for exercising such rights.

CONCLUSION

The opinion of the Court of Appeals pierces the spurious argument of the Petitioners. As the Court said, "[t]o hold that Phillips was not protected against discharge because he took the first prescribed step under the Ken-Car procedure to invoke the Coal Mine Health and Safety Act, to hold that only a miner's *discharge after* he reaches the Bureau of Mines with his complaint is protected by the Safety Act, would nullify not only the protection against discharge but also the fundamental purpose of the Act to compel safety in the mines" (Opinion of Court of Appeals, p. 18).

For the foregoing reasons, and the reasons well stated in the decision of the Court of Appeals, the Respondent says that the Petition for a Writ of Certiorari should be denied.

FRANCIS D. BURKE
317 Second Street
Box 50
Pikeville, Kentucky 41501

JOSEPH W. JUSTICE
317 Second Street
Box 50
Pikeville, Kentucky 41501

Attorneys for Respondent,
Franklin Phillips